

# EXHIBIT 1

1 UNITED STATES BANKRUPTCY COURT

2 DISTRICT OF SOUTH CAROLINA

3 Case No. 24-02019-EG

4 - - - - - x

5 In the Matter of:

6  
7 FAMULUS HEALTH, LLC,

8  
9 Debtor.

10 - - - - - x

11 United States Bankruptcy Court

12 King and Queen Building

13 145 King Street, Room 225

14 Charleston, SC 29401

15  
16 August 20, 2024

17 2:05 PM

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20  
21 B E F O R E :

22 HON ELISABETTA GASPARINI

23 U.S. BANKRUPTCY JUDGE

24  
25 ECRO: UNKNOWN

<p style="text-align: right;">Page 2</p> <p>1 HEARING re Continued Motion to Dismiss Case Filed by Michael  2 Conrady on behalf of Famulus Health, LLC. (07/01/2024) (Doc.  3 73)  4  5  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25 Transcribed by: Sonya Ledanski Hyde</p>	<p style="text-align: right;">Page 4</p> <p>1 UNITED STATES DEPARTMENT OF JUSTICE  2 Attorneys for The United States Trustee  3 Strom Thurmond Federal Building  4 1835 Assembly Street  5 Columbia, SC 29201  6  7 BY: KEITH POSTON (TELEPHONICALLY)  8  9 FOX ROTHSCHILD LLP  10 Attorneys for Prime Therapeutics, LLC  11 33 S. Sixth Street, Suite 3600  12 Minneapolis, MN 55402  13  14 BY: ELLIE J. BARRAGRY (TELEPHONICALLY)  15  16 FOX ROTHSCHILD LLP  17 Attorneys for Prime Therapeutics, LLC  18 2 W. Washington Street, Suite 1100  19 Greenville, SC 29601  20  21 BY: M. KEVIN McCARRELL (TELEPHONICALLY)  22  23 ALSO PRESENT TELEPHONICALLY:  24 MICHAEL SZWAJKOS, Debtor's Representative  25</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES:  2  3 CAMPBELL LAW FIRM, PA  4 Attorneys for Debtor  5 PO Box 684  6 Mount Pleasant, SC 29465  7  8 BY: KEVIN CAMPBELL (TELEPHONICALLY)  9  10 WEIL GOTSHAL &amp; MANGES LLP  11 Attorneys for GoodRx  12 767 Fifth Avenue  13 New York, NY 10153  14  15 BY: DAVID COHEN (TELEPHONICALLY)  16 DAVID LENDER (TELEPHONICALLY)  17  18 ROGERS TOWNSEND, LLC  19 Attorneys for GoodRx  20 1221 Main Street  21 Columbia, SC 29201  22  23 BY: MICHAEL WEAVER (TELEPHONICALLY)  24  25</p>	<p style="text-align: right;">Page 5</p> <p>1 PROCEEDINGS  2 CLERK: All, rise. The United States Bankruptcy  3 Court for the District of South Carolina is now in session.  4 The Honorable Elisabetta G.M. Gasparini presiding.  5 THE COURT: Good afternoon. We're here this  6 afternoon on the case of Famulus Health, LLC. It's a  7 Chapter 11 case and it is Case Number 24-02019, and it's a  8 Motion to Dismiss the case. The Court held an evidentiary  9 hearing on August 16th, which was Friday, and the Court is  10 ready to rule on the matter orally on the docket -- on the -  11 - at today's hearing.  12 I know that the courtroom deputy had asked for  13 appearances. I'm going to read the names of who, we  14 believe, is on. And if there's anyone I don't call, please  15 state your name. Kevin Campbell for Debtor, Mr. Szwajkos  16 for the Debtor's representative, Mr. David Lender, Mr. David  17 Cohen and Mr. Michael Weaver for GoodRx. Also, Kevin  18 McCarrell and Ellie Barragry. I believe they're with Prime.  19 Keith Poston from the United States Trustee's Office. First  20 of all, can anyone not hear me okay? All right. I assume  21 everybody can hear, and anyone whose name I have not called  22 who is on the line? All right.  23 The Court is now ready to read into the record the  24 ruling. This matter is before the Court on the Motion to  25 Dismiss the case filed by the Debtor, Famulus Health, LLC,</p>

<p style="text-align: right;">Page 6</p> <p>1 on July 1, 2024. GoodRx, Inc. filed a Response to the  2 Motion and a Motion to Convert the case on July 22, 2024.  3 Letters in support of a dismissal have been filed by  4 Unsecured Creditors, CloudHesive and Michelle Frank. The  5 Court notes that Ms. Frank is an insider and thus has given  6 the correspondence the appropriate weight. Prime  7 Therapeutics, LLC, which the Court will refer herein as  8 “Prime”, filed a Response in support of a Motion to Dismiss  9 the case on August 2, 2024. The Debtor filed a Reply to  10 GoodRx’s Response on August 5th and the parties filed a  11 Joint Statement of Dispute on August 12, 2024. The Court  12 then, as I stated earlier, held a hearing on the Motion to  13 Dismiss the case on August 16th, during which the Debtor  14 presented the testimony of its manager, Mr. Michael  15 Szwajkos, and the parties presented the following exhibits  16 into the record: GoodRx Exhibits 1, 5, 6 7, and 8 and  17 Debtor’s Exhibit A.  18 The Court makes the following findings of fact and  19 conclusions of law: the record reflects that Debtor is a  20 healthcare technology services company founded in 2020 under  21 the laws of South Carolina. It was created to build and  22 code custom solutions or technology applications for health  23 plans, pharmacy benefits, managers and employer groups to  24 lower drug prices for their members in the United States.  25 Debtor offers its members organizations to technologies,</p>	<p style="text-align: right;">Page 8</p> <p>1 Agreement and the parties engaged in arbitration of their  2 dispute. The final arbitration hearing was conducted, in  3 person, from November 27th through December 1st, 2023.  4 On February 15, 2024, the arbitrator issued the  5 arbitration award finding that Debtor breached his  6 confidentiality and exclusivity obligations owed to GoodRx  7 under the Services Agreement, granted GoodRx expectation  8 damages of close to \$56 million, as well as a permanent  9 injunction enjoining Debtor from designing, developing,  10 manufacturing, marketing, selling or licensing any  11 technology or services similar or identical to what is  12 referred in the Injunction Order as the “Solution”.  13 According to the terms of the arbitration award, the  14 injunction was to take effect immediately and remain in  15 effect unless there is further action by the arbitrator or a  16 court of competent jurisdiction.  17 On February 21, 2024, the Debtor moved to vacate  18 their arbitration award in District Court, commencing Case  19 Number 24-CV-00886. The next day, on February 22, 2024,  20 GoodRx filed a Petition to Confirm the arbitration award in  21 the District Court, commencing Case Number 24-MC-00126.  22 GoodRx subsequently moved to consolidate the two actions,  23 and the District Court entered an order on April 12, 2024,  24 consolidating them. Extensive motion practice ensued  25 afterwards. The District Court consolidated all the motions</p>
<p style="text-align: right;">Page 7</p> <p>1 Echo and Fast. The Echo technology platform provides data  2 and analytics to member organizations while the Fast  3 technology is a cloud-based pharmacy switch application that  4 provides real-time pharmacy benefit processing.  5 In or around June 2020, Debtor and GoodRx entered  6 into a Services Agreement effective as of July 1, 2020. It  7 has been alleged in prior pleadings filed with this Court  8 that pursuant to the Services Agreement, in exchange for  9 GoodRx’s disclosure of certain confidential information, the  10 Debtor agreed to exclusively distribute GoodRx’s integrated  11 Cash Solution technology to pharmacy benefits managers. In  12 return, GoodRx disclosed confidential information to Debtor.  13 The Services Agreement included certain confidentiality and  14 exclusivity provisions. Shortly after the parties entered  15 into the Services Agreement, GoodRx has asserted that Debtor  16 began to breach the agreements, confidentiality and  17 exclusivity provision by misusing GoodRx’s confidential  18 information to implement a competing integrated cash  19 solution, the Fast technology, to compete against GoodRx,  20 which had then proceeded to offer and eventually sold to  21 Prime -- and eventually sell to Prime Therapeutics, LLC.  22 GoodRx filed a demand for Arbitration on February 10, 2023,  23 seeking, among other things, excuse me, February 10, 2024 --  24 no, excuse me, 2023, seeking, among other things, to enjoin  25 Debtor from violating the exclusivity obligations under the</p>	<p style="text-align: right;">Page 9</p> <p>1 filed by the parties and heard argument on April 30, 2024.  2 Soon after GoodRx’s Motion to Confirm the arbitration award,  3 the Debtor’s Motion to Vacate it, were fully briefed, excuse  4 me, soon after GoodRx’s Motion to Confirm the arbitration  5 award and Debtor’s Motion to Vacate it were fully briefed  6 and heard by the District Court and taken under advisement.  7 The Debtor filed this bankruptcy case on June 3rd.  8 GoodRx filed a Motion for Relief from Stay on June 10, 2024,  9 and Debtor objected to the Motion. At that point, Debtor  10 determined it would be better to let the District Court  11 affirm or vacate the arbitration award and deal with the  12 consequences outside of bankruptcy. Accordingly, prior to  13 the hearing on the Stay Relief Motion, Debtor filed the  14 current motion on July 1, 2024, seeking to dismiss this  15 case. The Court entered an Order on July 2, 2024, modifying  16 the Automatic Stay to allow the District Court to adjudicate  17 the parties’ Motions to Confirm, Vacate or Modify the  18 arbitration award. The District Court reopened its case by  19 Order entered on July 26, 2024, but has taken no further  20 action as of this date.  21 At the hearing on this Motion to Dismiss this  22 case, Debtor presented the testimony of Mr. Szwajkos in  23 support of the dismissal of the case, as opposed to  24 conversion. According to Mr. Szwajkos, in February of 2024,  25 Debtor’s business was significantly affected by a data</p>

<p style="text-align: right;">Page 10</p> <p>1 breach at United Healthcare. Mr. Szwajkos testified that  2 the data breach required them to shut down operations for a  3 couple of months. In the months following this brief shut  4 down and the entry of the arbitration award, Debtor has  5 operated its business as usual, as directed by its counsel,  6 and has continued to use both the Echo and Fast technologies  7 and offer those technologies to new customers. Mr. Szwajkos  8 testified the bankruptcy case was filed for two purposes,  9 (1) to address debts resulting from the shutdown, and (2) to  10 attempt to reach a resolution with GoodRx regarding the  11 arbitration award through a Chapter 11 reorganization.  12 After the filings of the Stay Relief Motion, Mr.  13 Szwajkos stated that it became apparent that GoodRx was not  14 willing to work out a resolution in the bankruptcy case and  15 would not agree to a plan of reorganization. Mr. Szwajkos  16 further explained that Debtor's income is derived from two  17 primary business contracts, the first with Prime,  18 representing approximately 65 percent of its business, and  19 the second with CVS, representing approximately 35 percent  20 of its business. He further testified that the business  21 with CVS launched in December of 2023 and is growing  22 rapidly. CVS is playing a pivotal role in Debtor's going  23 forward strategy. He further stated that the CVS technology  24 is unrelated to the Fast technology used by Prime.  25 According to Mr. Szwajkos, even without the Prime contract,</p>	<p style="text-align: right;">Page 12</p> <p>1 pursuant to Section 1112 of the Bankruptcy Code on the  2 grounds that it will not be able to formulate a confirmable  3 plan. Debtor argues that continuing with the Chapter 11  4 process is not in its best interests or in the best  5 interests of the Creditors. Debtor believes that dismissing  6 the case and allowing it to resume business operations as  7 the existed pre-petition is the best interest of the estate  8 and all its creditors. Two of Debtor's Unsecured Creditors,  9 as I stated, have indicated their support for dismissal and  10 its customer, Prime, also filed a response in support of  11 dismissal.  12 GoodRx opposes dismissal and argues in favor of  13 converting the case to Chapter 7. GoodRx argues that the  14 Court should continue the preference of creditors,  15 especially its preference, excuse me, given that it is the  16 largest creditor in the case. GoodRx contends that this  17 case was filed for the sole purpose of frustrating the  18 efforts of the District Court to confirm the arbitration  19 award so that Debtor could continue to use its confidential  20 information. It asserts that Debtor has engaged and  21 continues to engage in knowing misconduct. By continuing to  22 operate using its confidential information, GoodRx argues  23 that Debtor continues to violate the injunction and incur  24 post-petition damages. Thus, GoodRx posits that conversion  25 is appropriate because (1) Debtor is deeply insolvent and</p>
<p style="text-align: right;">Page 11</p> <p>1 Debtor is still a healthy and successful technology company  2 moving forward with its CVS contract.  3 If the case were dismissed, Mr. Szwajkos testified  4 that Debtor has sufficient funds in its operating account  5 and from operational income using both technologies to pay  6 all its creditors except the contingent debt of GoodRx in  7 full, outside of bankruptcy within 90 days, or at least by  8 the end of the year. GoodRx's claim currently remains  9 contingent and will not become liquidated until the District  10 Court affirms the arbitration award. It is not entirely  11 clear to the Court whether there is a further appellate  12 process the Debtor would be entitled to if the District  13 Court were to affirm the arbitration award. Regardless, if  14 the case was converted to a Chapter 7, Mr. Szwajkos stated  15 that Debtor would be required to shut down all operations  16 which would lead to the termination of even the revenue  17 generating CVS contract. Mr. Szwajkos believes that there  18 would be no value to Debtor's technology if the case was  19 converted, and further, that consumers would be adversely  20 affected. No other entity could step in and operate that  21 technology, as he testified. In addition, there would be a  22 security risk for patient healthcare information currently  23 under Debtor's control and the Chapter 7 Trustee would have  24 to take measures to protect that information.  25 Debtor seeks voluntary dismissal of its case</p>	<p style="text-align: right;">Page 13</p> <p>1 has no going concern operations, no assets and material  2 value and no prospect of financial rehabilitation, (2)  3 Debtor's only material income stream is derived exclusively  4 from misusing GoodRx's confidential information, and (3)  5 this case needs a trustee to pursue a state claims and  6 causes of action and distribute any remaining cash and  7 proceeds to creditor, including possible avoidable transfers  8 of approximately \$2 million made within the preference  9 periods. It further argues that conversion is appropriate  10 to ensure that the Debtor isn't able to sidestep the  11 absolute priority rule by distributing preferential payments  12 to a select group of preferred creditors outside of Chapter  13 11. GoodRx claims it would be prejudiced by dismissal of  14 the case because no independent body would be monitoring  15 Debtor's activities and Debtor would likely continue to  16 violate the injunction and incur more claims against it.  17 Finally, it argues that conversion will maximize  18 recoveries for creditors by allowing the Chapter 7 Trustee  19 to liquidate the assets and make distributions to creditors  20 in an efficient manner. In its reply, Debtor states that it  21 has two main sources of income used to fund its operation,  22 Prime and CVS. Debtor asserts that it would be able to  23 continue to operate with just the proceeds from its contract  24 with CVS, even if the injunction was confirmed and would be  25 able to pay its creditors, in full, from current operations</p>

<p style="text-align: right;">Page 14</p> <p>1 solely under the -- from current operations. Debtor asserts  2 that conversion would cause its business operations to  3 immediately cease, which would negatively affect hundreds of  4 thousands of consumers for a cutoff from its services. It  5 also notes that there would be significant security risks to  6 a Chapter 7 Trustee if the Trustee was responsible for  7 securing substantial sensitive information relating to  8 consumer's healthcare information and the Trustee would  9 likely be ill equipped to incur the expense to secure this  10 data and unwilling to accept possibly this responsibility.  11 Finally, Debtor argues that the conversion of the case to a  12 Chapter 7 would have the effect of affirming the arbiter's  13 initial decision and would impose a restraining order on its  14 use of the Prime technology and cause Debtor to have to  15 cease all operations. Debtor believes that continuing its  16 business is in the best interests of the estate and its  17 creditors. Prime also requests that the Court dismiss the  18 case rather than convert and the United States Trustee did  19 not file an objection or response to the motion.  20 As to the conclusions of law, the Debtor has  21 conceded they would not be able to formulate a confirmable  22 plan and is unable to reorganize in a Chapter 11. The  23 parties agree that this case should not continue in Chapter  24 11 and should either be dismissed or converted. The issue  25 is whether dismissal or conversion is in the best interests</p>	<p style="text-align: right;">Page 16</p> <p>1 determining the best interests of the creditors under  2 1112(b) and it is not served by merely tallying the votes of  3 the unsecured creditors and yielding to the majority  4 interest.  5 As the Fourth Circuit noted in Superior Siding,  6 where the parties agree on a course of action, the Court  7 should accommodate their desire. However, where the parties  8 disagree, the Court must consider the interests of all  9 creditors, and choose the alternative that is most  10 beneficial to the parties and the estate as a whole. To do  11 so, the Fourth Circuit has instructed that, among other  12 considerations, the Court must assert the impact on the  13 creditors and the estate of each of the options by comparing  14 the creditors' interest in bankruptcy with those that would  15 have under state law. And I'm citing to Superior Siding at  16 Page 243. The Bankruptcy Code does not provide factors for  17 the Court to consider when making this determination, but  18 Colliers has set forth ten factors that may be considered to  19 fashion an appropriate remedy, and those factors have been  20 adopted by courts such as Lakefront Investors, LLC vs.  21 Clarkson, 484 B.R. 72, District of Maryland (2012), In Re  22 Helmers, 361 B.R. 190, Bankruptcy District of Kansas (2007),  23 and In Re Pettengill Enterprises (2013), Westlaw 5350789,  24 which is a Bankruptcy District of New Mexico case from 2013.  25 And these factors are, (1) whether some creditors receive</p>
<p style="text-align: right;">Page 15</p> <p>1 of the creditors in the estate and this decision falls  2 within the sound discretion of the Court. See Loop Corp.  3 vs. U.S. Trustee, 379 F.3d 511 (8th Circuit 2004).  4 Conversion or dismissal of a Chapter 11 case is governed by  5 Section 1112, which provides that, except as provided in  6 Paragraph 2 in Subsection C, on request of a party in  7 interest and after notice and a hearing, the Court shall  8 convert a case under this Chapter to a case under Chapter 7  9 or dismiss the case under this Chapter, whichever is in the  10 best interests of creditors and the estate for cause unless  11 the Court determines that the appointment under Section  12 1104(a) of a trustee or an examiner is in the best interests  13 of creditors and the estate. The Court turns to the  14 determination of which remedy, dismissal or conversion, is  15 in the best interests of the creditors and the estate.  16 The parties disagree as to whether conversion or  17 dismissal is best. The only party seeking conversion is  18 GoodRx, while some creditors have joined Debtor to indicate  19 their support for dismissal. However, as the Fourth Circuit  20 found in Rolex Corp. vs. Associated Materials, In Re  21 Superior Siding and Windows, 14 F.3d, 240, which is once  22 again, a Fourth Circuit 1994 case, majority rule is not the  23 test. The Fourth Circuit has stated its belief that the  24 policy of equality among creditors fundamental to the  25 bankruptcy law is one of the factors to be considered in</p>	<p style="text-align: right;">Page 17</p> <p>1 preferential payments and whether equality of distribution  2 would be better served by conversion rather than dismissal,  3 (2) whether there would be a loss of rights granted in the  4 case if it were dismissed rather than converted, (3) whether  5 the debtor would simply file a further case upon dismissal,  6 (4) the ability of the trustee in a Chapter 7 case to reach  7 assets for the benefit of the creditors, (5) in assessing  8 the interest of the estate, whether conversion or dismissal,  9 would maximize the estate's values and economic enterprise,  10 (6) whether any remaining issues would be better resolved  11 outside the bankruptcy forum, (7) whether the estate  12 consists of a single asset, (8) whether the debtor had  13 engaged in misconduct and whether creditors are in need of a  14 Chapter 7 case to protect their interests, (9) whether a  15 plan had been confirmed and whether any property remains in  16 the estate to be administered and (10) whether the  17 appointment of a trustee is desirable to supervise the  18 estate and address possible environmental and safety  19 concerns.  20 The Court has taken each factor, to the extent  21 applicable to the facts of this case, into consideration.  22 The first factor states whether some creditors receive  23 preferential payments and whether equality of distribution  24 would be better served by conversion rather than dismissal.  25 As stated in the schedules filed by the Debtor, there is</p>

<p style="text-align: right;">Page 18</p> <p>1 evidence that some creditors in this case receive  2 preferential payments. If the case was converted, the  3 Chapter 7 Trustee could pursue those preferential transfers  4 and proceed -- excuse me, and proceeds from any of these  5 actions to the extent they prove successful, would be  6 distributed pro rata, with GoodRx as the largest Unsecured  7 Creditor, receiving the highest percentage of the amounts  8 recovered. According to Debtor's Statement of Financial  9 Affairs, there were transfers of approximately \$2 million  10 made within the preference periods that could potentially be  11 avoided. However, the Court notes that some of those  12 transfers, \$693,236.00 to be exact, according to the  13 Statement of Financial Affairs, were made to CloudHesive  14 within the 90 days prior to the bankruptcy case.  15 CloudHesive is a creditor listed on Debtor's Schedule F, and  16 therefore, any recovery against it in this case may be  17 subject to claims for setoff.  18 Moreover, as the Court decided in the In Re Ashley  19 Oaks Development Corp. case at 558 B.R. 280, Bankruptcy  20 District of South Carolina (2011), the costs associated with  21 pursuing preference actions and collectability must also be  22 considered. The Chapter 7 Trustee wouldn't necessarily  23 incur administrative expenses to pursue this action, which  24 would, in itself, decrease the funds available for  25 distribution for creditors. The downside, however, is that</p>	<p style="text-align: right;">Page 20</p> <p>1 Debtor asserts that all creditors, except possibly GoodRx,  2 would be paid in full through ongoing operations. The  3 testimony showed that Debtor has funds available from its  4 operation to pay the remaining creditors other than GoodRx.  5 Nevertheless, GoodRx would still have options available to  6 pursue repayment of its claim once determined by the  7 District Court. GoodRx could pursue repayment outside of  8 bankruptcy through the normal mechanisms available to  9 judgment lien creditors. GoodRx and Debtor could reach an  10 agreement regarding the repayment plan from the ongoing  11 revenue stream from the technology now subject to a possible  12 injunction -- or excuse me, to the injunction that is to be  13 affirmed or vacated. While dismissal would appear to not be  14 as beneficial to GoodRx as conversion would be, it is  15 important to note that GoodRx's claim, as stated, remains  16 contingent at this time and all other creditors would  17 clearly benefit from the dismissal. Accordingly, this  18 factor weighs in favor of dismissal.  19 The second factor is whether there would be a loss  20 of rights granted in the case if it were dismissed rather  21 than converted. If the case was dismissed, no independent  22 body would be regularly monitoring Debtor's activities and  23 Debtor would continue to, possibly, violate the injunction  24 currently in place through its operation until the District  25 Court confirms the arbitration award, unless the arbitration</p>
<p style="text-align: right;">Page 19</p> <p>1 upon conversion, Debtor would be required to cease  2 operations, and it is unlikely that a Chapter 7 Trustee  3 would opt to seek relief to continue operations for a short  4 period of time while liquidating. Such cessation of  5 operations would benefit GoodRx because Debtor would no  6 longer be using the disputed technology, and the Chapter 7  7 Trustee would proceed to liquidate Debtor's assets.  8 However, upon conversion, there may be additional claims  9 arising from the cessations of Debtor's business operations,  10 including potential breach of contract claims by Prime and  11 other executory contract holders.  12 Moreover, at this juncture, the Court does not  13 know how the District Court will rule. While acknowledging  14 that the bar to vacate or modify an arbitration award is one  15 of the highest hurdles to surpass, the Court cautiously  16 notes that to convert the case would be tantamount to  17 shutting down the entire company and the evidence indicates  18 that all technology software assets would, in essence,  19 become worthless. The testimony indicated that there would  20 not even be a market for the technology use for the CVS  21 contract, which does not appear to be in violation of the  22 arbitrator's injunction if the case were to cease its  23 operations because no other entity, but the Debtor could  24 step in and operate that technology.  25 If the case were dismissed, on the other hand,</p>	<p style="text-align: right;">Page 21</p> <p>1 award were vacated. GoodRx would have to pursue further  2 litigation to enforce its injunction, and it is unclear how  3 or when GoodRx would receive any recovery. Nevertheless,  4 GoodRx's rights under the arbitration award would be  5 preserved unless the District Court vacated the arbitration  6 award. If the District Court were to modify or vacate the  7 arbitration award, then Debtor's business would continue as  8 usual. If the District Court were, on the other hand,  9 affirm the arbitration award, GoodRx would have options  10 available to it, under state law, to pursue recovery of any  11 final judgment determined by the District Court, federal or  12 state law, I should add, including seeking emergency relief  13 to ensure that the injunction is complied with or possibly  14 even the appointment of a receiver or an independent party  15 or may even seek to put the Debtor into an involuntary  16 Chapter 7 case if the light hurdles were met.  17 If the Court dismisses a case and the District  18 Court subsequently affirms the arbitration, then GoodRx's  19 claim for damages would have continued to increase as post-  20 petition damages would have accrued and that claim could  21 possibly dwarf any remaining creditors' claims. However,  22 Debtor would have the benefit of its continued revenue  23 stream from the technology which does not appear to be in  24 violation of the injunction, including the CVS contract  25 which would ultimately be used to pay creditors and benefit</p>

1 all parties. But even if the whole entity would eventually  
 2 have to be shut down, GoodRx could still pursue its remedies  
 3 in state court or federal court. If the case was converted  
 4 and Debtor required to cease operations, that would  
 5 effectively ratify the arbitration award and injunction  
 6 granted therein, and in essence, remove that decision, at  
 7 least as it applies to the injunction portion of the  
 8 arbitration award from the District Court to this court.  
 9 Debtor would lose its opportunity to pursue an order  
 10 vacating the arbitration award because the conversion would  
 11 cause Debtor's operation to cease and cause, among other  
 12 things, the termination of the CVS contract prior to any  
 13 decision by the District Court is reached. The Court is now  
 14 ready to do so, as they must consider the interests of all  
 15 the creditors. As previously mentioned, to rule in favor of  
 16 conversion now would be a gamble on what the District Court  
 17 would do and would completely wreck the enterprise to the  
 18 detriment of creditors and the estate as a whole.

19 The third factor is whether the Debtor would  
 20 simply file a further case upon dismissal. It appears  
 21 unlikely that Debtor would file a further case upon  
 22 dismissal since Debtor admits that it could not propose a  
 23 confirmable plan and oppose this conversion to a Chapter 7.  
 24 The fourth factor is the ability of the Trustee in a Chapter  
 25 7 case to reach assets for the benefit of the creditors. As

1 an initial matter, the Court notes the Debtor's Schedule  
 2 inaccurately states that it has \$3,679,312.86 in assets.  
 3 According to the Court's calculations, the total of Debtor's  
 4 assets is \$2,672,218.86 -- excuse me, let me try that again,  
 5 \$2,672,218.86, and it appears there is non-exempt equity in  
 6 these assets which could be sold for the benefit of  
 7 creditors. Debtor's total liabilities are \$62,013,508.03,  
 8 according to the schedules, with its largest unsecured  
 9 Creditor being GoodRx, holding a contingent debt of  
 10 approximately \$56 million. According to Debtor's Statement  
 11 of Financial Affairs, as indicated earlier, there are  
 12 avoidable transfers of approximately \$2 million made within  
 13 preference periods to insiders. However, the Court notes  
 14 that some of these transfers were made to CloudHesive within  
 15 90 days prior to the bankruptcy case and the creditor --  
 16 which is a creditor in this case, and therefore, may be  
 17 subject to set off.

18 Most likely, the preference recovery would be the  
 19 only assets of any possible value if the case were  
 20 converted. Aside the technology software, the other assets  
 21 listed in Debtor's schedule of any value are the accounts  
 22 receivables outstanding as of the Petition date. But any  
 23 such asset may have been used or, as with any ARs (accounts  
 24 receivable), their collectability is not guaranteed. If the  
 25 case is converted and the operation ceased, there would be a

1 lot more rejection damages and claims. The Court, in fact,  
 2 notes that in Schedule G, there are 33 contracts with  
 3 various entities, and such would diminish recovery for  
 4 GoodRx's claim to the extent it eventually becomes  
 5 liquidated.

6 It further appears that the software would be  
 7 completely valueless if the case were converted due to the  
 8 pending injunction litigation which would make it unlikely  
 9 that a purchaser would want to buy these assets when they're  
 10 subject to the arbitration award or there is no-one willing  
 11 to explain how the technology operates or how to maintain  
 12 it. Therefore, this factor also favors dismissal. In  
 13 assessing -- the fifth factor is then, in assessing the  
 14 interest of the estate, whether conversion or dismissal  
 15 would maximize the estate's value as an economic enterprise.  
 16 Debtor contends the dismissal would maximize the estate's  
 17 value because it could pay off its other creditors through  
 18 continued operations and it could continue to grow its  
 19 business. The testimony demonstrated that Debtor had funds  
 20 on hand to pay all creditors except GoodRx and would  
 21 continue to earn income through other business with CVS that  
 22 is not impacted by the injunction.

23 To reiterate what has already been concluded, if  
 24 the case is dismissed and the District Court affirms the  
 25 arbitration award, it is not entirely clear how GoodRx would

1 be paid. But there are avenues of recovery available to it  
 2 under non-bankruptcy law, and potentially under the  
 3 Bankruptcy Code if creditors wish to later file an  
 4 involuntary proceeding. GoodRx asserts that Chapter 7 would  
 5 allow an independent third-party to investigate potential  
 6 estate claims and causes of action to maximize value for  
 7 creditors. However, the evidence indicates that the  
 8 potential recovery for the remaining creditors in this case  
 9 would be minimal in a Chapter 7 as GoodRx would receive the  
 10 largest percentage of any recovery and there would be  
 11 administrative costs associated with such recovery.

12 The sixth factor is whether any remaining issues  
 13 would be better resolved outside the bankruptcy forum. This  
 14 case is essentially a two-party dispute between Debtor and  
 15 GoodRx. The Court has already granted relief from stay to  
 16 allow the District Court to resolve the issues between  
 17 GoodRx and Debtor relating to the arbitration award. In  
 18 granting such relief, the Court has necessarily concluded  
 19 that the issues between these parties would be better  
 20 resolved in the District Court. The eighth factor is  
 21 whether the Debtor had engaged in misconduct and whether  
 22 creditors are in need of Chapter 7 case to protect their  
 23 interests. While the evidence indicates that other  
 24 creditors, aside GoodRx, would benefit from payment through  
 25 Debtor's continued operations if the case were dismissed, it



<p style="text-align: right;">Page 26</p> <p>1 appears that GoodRx's interests would be better protected in  2 a Chapter 7 case, especially if the District Court  3 ultimately confirmed the arbitration award. Conversion to a  4 Chapter 7 would ensure Debtor is unable to sidestep absolute  5 priority rule by distributing preferential payments to a  6 select group of preferred creditors outside Chapter 11.  7 However, as the Court has noted, at this time, the  8 issue whether the arbitration award is to be affirmed,  9 vacated or modified, is in front of the District Court, and  10 to convert the case would, in essence, lead to unnecessarily  11 ceasing all operations of the Debtor, even ones that may not  12 even be implicated by future approval of the arbitration  13 award. The rest of the factors that were outlined earlier  14 appear inapplicable in this case. At the hearing GoodRx  15 suggested for the first time that the appointment of a  16 Chapter 11 Trustee may be appropriate as an alternative to  17 converting the case. The Court notes that such an argument  18 was not included as one of the issues to be decided in the  19 joint statement of Dispute. Regardless, the Court notes  20 that Section 1112(b)(1) itself indicates that the case  21 should be dismissed or converted if cause exists, and I'm  22 quoting, "Unless the Court determines that the appointment  23 of a Chapter 11 Trustee or an examiner is in the best  24 interest of creditors." The Court, however, does not find  25 that such an appointment would be in anyone's interest.</p>	<p style="text-align: right;">Page 28</p> <p>1 Therefore, it is ordered that this case is hereby  2 dismissed. The Court will enter a short order this  3 afternoon just indicating that, based on the ruling and the  4 findings of fact and conclusions of law, the case will be  5 dismissed. With nothing further for this afternoon, and the  6 ruling having been delivered, the Court is in recess until  7 the next session. Thank you.  8 CLERK: All, rise.  9 (Whereupon these proceedings were concluded at  10 2:39 PM)  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>
<p style="text-align: right;">Page 27</p> <p>1 Appointing a Chapter 11 Trustee would add another layer of  2 administrative costs at this time and all parties  3 acknowledge that there could not be a confirmable Chapter 11  4 plan without GoodRx's agreement, which currently does not  5 exist.  6 Under the circumstances, the Court finds there  7 would be no benefit to the estate to appoint a Chapter 11  8 Trustee in this case and it would only result in additional  9 expenses. Taking into consideration the evidence admitted  10 into the record, the testimony of Mr. Szwajkos, the  11 pleadings filed in the case and the arguments of the parties  12 at the hearing, and applying the factors adopted by the  13 courts in this district and determining whether a case  14 should be dismissed rather than converted, to the  15 circumstances in this case, the Court finds that the weight  16 of the evidence supports a finding that the interest of all  17 creditors in the estate would be better served by dismissal  18 of the Chapter 11 proceeding rather than by converting it to  19 a Chapter 7. Dismissing the case would put the parties back  20 in the position they would have been prior to this  21 bankruptcy being filed and creditors would be left with the  22 recourse they would have had or have under non-bankruptcy  23 law. But at least the revenue stream that is not subject to  24 the current injunction imposed by the arbitration award  25 would not be cut off and lost.</p>	<p style="text-align: right;">Page 29</p> <p>1 INDEX  2  3 RULINGS  4  5 Case dismissed Page Line  6 28 1  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>

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I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

*Sonya M. Ledanski Hyde*

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: August 26, 2024

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